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OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH VA 22040-0747

In re Application of	:	
Jun Ido	:	ON APPLICATION FOR
Application No. 10/555,530	:	PATENT TERM ADJUSTMENT
Filed: November 3, 2005	:	
Attorney Docket No. 2257-	:	
0255PUS1	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION UNDER 37 C.F.R. § 1.705(B) filed June 8, 2009. Applicant submits that the correct patent term adjustment to be indicated on the patent is nine hundred fifty-four (954) days, not six hundred thirty-eight (638) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee<sup>1</sup>.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

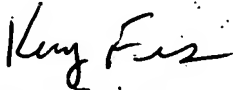
Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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<sup>1</sup> For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.



Kery Fries  
Senior Legal Advisor Attorney  
Office of Patent Legal Administration

Docket No.: 2257-0255PUS1  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Jun IDO

Application No.: 10/555,530

Confirmation No.: 9638

Filed: November 3, 2005

Art Unit: 2611

For: DEMODULATION DEVICE AND  
DEMODULATION METHOD

Examiner: K. A. Timory

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 CFR § 1.705 (d)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Madam:

Pursuant to CFR § 1.705 (d), the Patentee hereby requests reconsideration of the patent term adjustment indicated on the Notice of Allowance for Application No. 10/555,530 (Exhibit 1). Specifically, while the Notice of Allowance indicates a patent term adjustment of 638 days, Patentee submits that the patent term adjustment should correctly be 954 days.

**STATEMENT OF FACTS**

1. The Notice of Allowance issued in this case on March 10, 009 indicated that the Patent Term Adjustment to date was 638 days, (see page 3 of Exhibit 1).
2. The U. S. Patent and Trademark Office's Patent Term Adjustment History, as indicated in the Patent Application Information Retrieval (PAIR) system indicates a Patent Term Adjustment due to prosecution delays of 638 days, based upon 638 days of USPTO delays minus 0 days of Applicant delay (see Exhibit 2).

3. However, the PAIR system does not indicate any Patent Term Adjustment due to the USPTO failure to issue a patent within three (3) years (36 months) from the actual filing date of the application, November 3, 2005 (37 C.F.R. § 1.702(b)), which delay was 316 days.
4. In accordance with the recent District Court decision in *Wyeth et al. v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), the correct Patent Term Adjustment should be 638 days of prosecution delay, plus 316 days for the failure of the USPTO to issue a patent within three (3) years of the actual filing date of the application (37 C.F.R. § 1.702(b)), for a total of 954 days of Patent Term Adjustment.
5. Accordingly, Patentee hereby requests that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to 954 days.

**COMPLIANCE WITH REQUIREMENTS OF  
37 CFR § 1.705 (b)(1) AND (2)**

6. A statement of facts is presented above, detailing the relevant dates and the correct patent term adjustment.
7. The present patent is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).
8. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

**CONCLUSION**

The USPTO is requested to correctly indicate that U.S. Application No. 10/555,530 is entitled to 954 days of Patent term Adjustment.

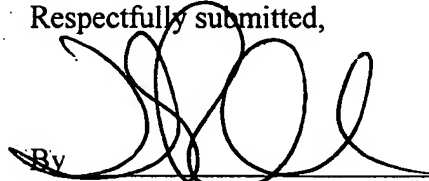
**PAYMENT OF FEES**

As set forth in the attached Fee Transmittal, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for the consideration of this Request as required by 37 C.F.R. § 1.18(e).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: JUN 08 2009

Respectfully submitted,



By \_\_\_\_\_  
D. Richard Anderson

Registration No.: 40,439

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